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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

AARON P. BROOKS and ALISA R.
BROOKS,

PLAINTIFF,

vs.

LEHMAN BROTHERS HOLDINGS, INC.;
CITIMORTGAGE, INC.; AXIOM
FINANCIAL, INC.; AND, MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.,

DEFENDANTS,

COMPLAINT
(JURY DEMAND)

CIVIL NO.

JUDGE

CORVUS LAW GROUP, LLC
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(702) 838-7522

Plaintiffs, Aaron P. Brooks and Alisa R. Brooks (hereinafter collectively the “Plaintiffs”),
by and through counsel, Ryan West complains of defendants, and for cause of action alleges as
follows:

PARTIES, JURISDICTION, VENUE

1. Plaintiffs, Aaron P. Books and Alisa R. Brooks (hereinafter “Plaintiffs”) are
individuals and actual citizens of Nevada whose address is 2170 Polynesia Circle, Henderson,
Nevada 89074.

1 10. On or about May 17, 2005, Plaintiffs executed a Promissory Note (hereinafter “the
2 Note”) in favor of defendant Lender Axiom Financial, Inc. (hereinafter “Axiom” or “Lender”).
3 Axiom purports to be the successor in interest thereof. On information and belief, the original of
4 said Note was then retained by defendant Axiom.

5 11. On or about May 17, 2005, Plaintiffs made and delivered the Deed of Trust
6 (hereinafter “the Trust Deed”), a copy of which is attached hereto as Exhibit “A,” conveying the
7 subject property in trust for the purposes recited therein to Nevada Title as Trustee. Said Trust
8 Deed was recorded on May 24, 2005 and found at 20050524-0004144 in the Clark County
9 Recorder’s Office.
10

11 12. Said Trust Deed names as beneficiary thereof defendant MERS acting solely as
12 nominee for Lender and Lender’s successors and assigns, and the successors and assigns of
13 MERS.
14

15 13. MERS is a private corporation that administers the MERS system, a national
16 electronic registry that tracks the transfer of ownership interests and servicing rights in mortgage
17 loans. Through the MERS system, MERS purports to become the mortgagee of record for
18 participating members through assignment of the members interests to MERS. MERS is listed as
19 the grantee in the official records maintained at county recorders offices. The lenders initially
20 retain the promissory notes as well as the servicing rights to the mortgages. The lenders can then
21 sell these interests to investors.
22

23 14. The first position Trust Deed recites that the Beneficiary of this security instrument
24 is defendant MERS (solely as nominee for Lender and Lender’s successors and assigns) and the
25 successors and assigns of MERS and
26

27 “Borrower understands and agrees that MERS holds only legal title to the
28 interests granted by Borrower in this Security Instrument, but, if necessary to
comply with law or custom, MERS (as nominee for Lender and Lender’s
successors and assigns) has the right to exercise any or all of these interests,

1 including, but not limited to, the right to foreclose and sell the property; and
2 to take any action required of Lender including, but not limited to, releasing
and canceling this Deed of Trust.”

3 15. A Servicer was designated to act as the representative/agent for the purported
4 owners of the debt evidenced by the subject Note and the corresponding Trust Deed.

5 16. Upon information and belief, Axiom was provided a line of credit by undisclosed
6 warehouse lenders, pending pooling of the Note with other such instruments, and sale of the
7 pooled instruments as securities to unknown investors.

8 17. Upon information and belief, the Axiom has been reimbursed all sums advanced
9 by them in connection with the Note.

10 18. Upon information and belief Axiom’s function was limited to obtaining the Note,
11 in exchange for a fee, as a preliminary step to “securitization” of the debt as described herein.
12 Said securitized debt is purported to be a part of the _____ securitization # _____.
13 Identifying information from the Securities and Exchange Commission for said pool is attached as
14 Exhibit “B”.

15 19. Upon information and belief, the debt was pooled with similar debts pursuant to a
16 Pooling and Servicing Agreement between Lender and Bank _____ (hereinafter
17 “Bank”), in which Bank purported to act as Trustee of a Trust created thereby, for the purpose of
18 selling such debts as securities to investors, and appointing a “Servicer” of the pooled debts, and a
19 “Custodian” of the Notes evidencing such debts, for the benefit of such investors.

20 20. Such investors and/or the person or persons unknown who sold such securities have
21 obtained insurance against default on the underlying obligations in the form of a “credit default
22 swaps” or other credit enhancements.

23 21. The cost of such credit default swap or other credit enhancement was, as applicable
24 to the subject loan, charged to borrower.
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1 22. Notwithstanding the transfer of the debt as herein described, no transferee thereof
2 has recorded a copy of any security agreement providing any security interest in the Trust Deed or
3 any appropriate affidavits, pursuant to NRS 107.077 in order to perfect any right of enforcement
4 under NRS 107.080.

5 23. As a result of the transfer of the debt as part of a securities transaction, and of the
6 lack of such recordings, defendants are not the present owners of the debt or the obligees thereon.
7 Plaintiffs, and, upon information and belief, defendants, do not know who is or are the present
8 owners of the debt, or the obligee(s) thereon.

9 24. Named defendants, or one of them, is a mere custodian of the Note for others.

10 25. The Trust Deed has not been assigned or transferred of record, in whole or in part.

11 26. Plaintiffs, having a right under the Note and federal law to do so, demanded of the
12 Servicer, who purports to have a relationship in the nature of agency with persons to whom the
13 debt and/or Trust Deed may be assigned, and/or persons in fiduciary relationships to such
14 assignees, all information and records showing transfer of such debt to any person or persons, for
15 the purposes, among others, of determining the proper persons to receive payments under the
16 Note, or to negotiate payment or reinstatement of the obligation, or to obtain acknowledgment of
17 proper application of payments. The aforementioned demand letters are attached as Exhibit "C."
18 No qualified response was provided.

19 27. Through the conduct described in this Complaint, Defendants have attempted to
20 collect on a debt to which they are not legally entitled as they have no knowledge of proper
21 payments and credits to the debt, and they are not the proper parties entitled to enforce the Note.

22 28. The obligations of the Plaintiffs are not owed to the Defendants who are claiming
23 interest. There is no perfected interest as to the true Note Holder.
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1 29. Neither the investors in the mortgage backed securities nor any other entity or
2 person who had a right to payment from the Plaintiffs or who was a lawful beneficiary under the
3 trust deed ever declared a default of the note executed by Plaintiffs and no true beneficiary with a
4 beneficial interest under the trust deed ever declared a default under the Note and trust deed and
5 no proper beneficiary under the trust deed ever declared a default under the Note and trust deed
6 and no proper beneficiary under the trust ever directed or will ever direct a sale of the property
7 owned by Plaintiffs in which MERS is named as beneficiary or nominee of the beneficiary/lender
8 at issue in their action.
9

10 **FIRST CAUSE OF ACTION-ESTOPPEL/DECLARATORY JUDGMENT**

11 30. Plaintiffs incorporate herein by reference paragraphs 1-29 hereinabove.

12 31. The Servicers of the Note in the Trust Deed purport to have a relationship in the
13 nature of agency with persons to whom the debt and/or Trust Deed may be assigned, and/or
14 persons in fiduciary relationships to such assignees.
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16 32. By permitting the Servicers to so represent its capacity, the defendants and any
17 assignees have conferred upon the Servicers the right and obligation to disclose and assert the
18 interests of such assignees as necessary to protect such interests.

19 33. The refusal of the Servicers, upon demand, to disclose such interests is binding
20 upon their assignees.
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22 34. The result of such behavior by the Servicers, defendants, and such assignees, is to
23 subject borrowers and their successors in title, including plaintiff, to risks, abuses, and prejudice,
24 and to render impossible proper discharge of the debt.

25 35. As a result of such behavior, defendants, and such assignees, are estopped to assert
26 any present default on the debt, or power of sale under the Trust Deed.
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1 36. An actual controversy exists between plaintiff and defendants regarding the
2 amenability of the subject property to sale by defendants, which may be resolved by the Court
3 pursuant to 28 USC §2201, and Rule 57, N.R.C.P.

4 37. The Court should appropriately advance this matter on the calendar as provided by
5 Rule 57, F.R.C.P., and promptly enter its Order declaring that defendants lack any interest under
6 the Trust Deed which may be enforced by lien upon or sale of the subject property.
7

8 **SECOND CAUSE OF ACTION: DECLARATORY JUDGMENT**

9 38. Plaintiffs incorporate herein by reference paragraphs 1-37 hereinabove.

10 39. The defendants are not a Trustee of any existing Trust, and Defendants, the
11 Servicers and defendant Beneficiaries:

- 12 a. do not know whether a default had occurred, or had been declared by the actual
13 owners of the debt who have become the actual beneficiaries under the Trust
14 Deed;
15 b. lacked authority to declare a default or otherwise pursue collection of the debt;
16 c. lack authority to sell the subject property or to distribute any proceeds thereof;
17 d. are not entitled to any of such proceeds on their own account;
18 e. cannot give a trustee's deed which is free and clear of the debt;
19 f. cannot give an enforceable release of the Trust Deed.
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22 40. In the event that any investor in the debt, or any assignee of an interest thereto, did
23 not obtain assignment of the Trust Deed, the debt has, to that extent, become unsecured, and the
24 Note and Trust Deed, may not be foreclosed.

25 41. Plaintiffs, at any time relevant hereto, by diligent search or otherwise, could not
26 have discovered, without the assistance of the Servicer and, consequently, the defendants, the
27 identities of any assignee of any interest in the debt or Trust Deed, or the present owners of the
28

1 debt, or the interest of any such person as the result of any such assignment. Plaintiff was thereby
2 prevented from properly discharging the debt.

3 42. An actual controversy exists between plaintiff and defendants regarding the
4 amenability of the subject property to sale by defendants, which may be resolved by the Court
5 pursuant to 28 USC §2201, and Rule 57, N.R.C.P.
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7 43. The Court should appropriately advance this matter on the calendar as provided by
8 Rule 57, F.R.C.P., and promptly enter its Order declaring that defendants lack any interest under
9 the Trust Deed which may be enforced by lien upon or sale of the subject property.

10 **THIRD CAUSE OF ACTION: QUIET TITLE**

11 44. Plaintiffs incorporate herein by reference paragraphs 1-43 hereinabove.

12 45. The transfer of the debt as part of a security subjects Plaintiffs to potential multiple
13 and unpredictable recoveries, or attempts to recover, against the subject property.
14

15 46. The failure of defendants to retain any interest in the debt voided any title or power
16 they might have under the Trust Deed, and rendered said Trust Deed unenforceable by them.

17 47. The inability of Plaintiffs to safely discharge any lien of the Trust Deed against the
18 subject property in favor of assignees of interest in the debt and Trust Deed, and the threat of
19 multiple recoveries or attempts to recover against the subject property, constitute a cloud on
20 Plaintiffs' title which can only be removed by requiring all such assignees to appear and assert
21 their interests and the extent to which any obligation owing to them has not been discharged by
22 payment, including collections on insurance against default, or, failing such assertion of claims,
23 entry of a decree of quiet title freeing the subject property from the lien of such obligation.
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25 48. The Court, pursuant to 28 USC §2201 and NRS 40.010 (quiet title), should enter its
26 Order herein forthwith quieting title to the subject property in plaintiff and against defendants
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1 freeing title to the subject property of the lien of the Trust Deed and leaving any debt unsecured by
2 any interest in the subject property.

3 **FOURTH CAUSE OF ACTION: ACCOUNTING**

4 49. Plaintiffs incorporate herein by reference paragraphs 1-48 hereinabove.

5 50. Plaintiffs seek a full accounting for the transfers of their promissory note and the
6 securitization of their promissory note.
7

8 **FIFTH CAUSE OF ACTION: REFUND, FEES AND COSTS**

9 51. Plaintiffs incorporate herein by reference paragraphs 1-50 hereinabove.

10 52. The Trust Deed has been unenforceable by defendants from the first transfer of the
11 debt as set out hereinabove.

12 53. Defendant Bank's pretense of authority to foreclose, or attempt to foreclose, under
13 the Trust Deed would be fraudulent.

14 54. Defendant Bank's assertions to the Court herein that they hold and are entitled to
15 enforce the debt would constitute a fraud upon the Court, subjecting defendants to sanctions and
16 imposition of fees and costs under Rule 11, F.R.C.P., Rule 11, N.R.C.P., and NRS 107.077.

17 55. The Court should enter its Order herein forthwith to defendants, jointly and
18 severally, to pay to Plaintiffs its fees and costs, together with a reasonable attorney's fee, to be
19 shown by affidavit, and to reimburse to Plaintiff its fees and charges under the debt and Trust
20 Deed.
21

22 **WHEREFORE**, Plaintiffs prays that the Court enter its Order herein:
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24 1. Enjoining further dispositions of the subject realty pending resolution hereof.

25 2. Declaring that defendants and Trustee lack any interest in the subject property
26 which might permit them to foreclose, or attempt to foreclose, the Trust Deed and/or to sell the
27 subject property;
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3. Terminating all present collection activities upon any security in the subject property and enjoining any further such collection actions not originated by the owners of the debt.